SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 358

IN THE MATTER OF

The Claim for Compensation under the Workmen's Compensation Law made by

WALTER E. BRAADT,

Appellant,

vs.

THE CITY OF NEW YORK,
Department of Sanitation (self-insurer),

Respondent,

vs.

WORKMEN'S COMPENSATION BOARD,

Respondent.

(W. C. B. No. 05994124)

JURISDICTIONAL STATEMENT

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TABLE OF CONTENTS

	PAGE
JURISDICTIONAL STATEMENT	1
(a) Official and Unofficial Reports of Opinions	1
(b) Grounds of Court's Jurisdiction	2
(c) Questions Presented	4
(d) Statement of the Case	5
(e) Grounds Upon Which It Is Contended That Federal Questions Are Substantial	8
APPENDIX:	
A—Workmen's Compensation Board Memorandum of Decision	11
B—Decision of the Appellate Division	13
C—Order Appealed from of Court of Appeals	16

Cases Cited

Bantam Books, Inc. v. Sullivan, 372 U. S. 58 ..... 3, 8

Calbeck, et al. v. Travelers Insurance Co., 370 U. S. 114 ..... 3, 10

Gahagan Construction Corp. v. Armao, 165 F. 2d 301 (1st Cir. 1948), Cert. Den'd., 333 U. S. 876 ..... 3, 10

Grant Smith-Porter Shipping Co. v. Rhodes, 257 U. S. 469 ..... 3, 7, 9, 10

Panama Railroad Co. v. Johnson, 264 U. S. 375 ..... 3, 8, 9

Schellenger v. Zubik, 170 F. Supp. 92 (D. C. Pa. 1959) 3, 10

South Buffalo Railroad Co. v. Ahern, 344 U. S. 367 ... 3, 9

PAGE

Southern Pacific Co. v. Jensen, 244 U. S. 205 ..... 3, 9

The Lottawanna, 88 U. S. (21 Wall) 558 ..... 3, 9

Washington v. Dawson & Co., 264 U. S. 219 3

W. J. McCahan Sugar Ref. & Molasses Co. v. Stouffel, 41 F. 2d 651 (3rd Circ. 1930) 3, 10

United States Constitution Cited

Article III, Sec. 2 ..... 3-5, 7, 8

Statutes Cited

Jones Act, 46 U.S.C., Sec. 688 ..... 2, 4, 5

New York State Workmen's Compensation Law, Sec. 113 ..... 4, 7

28 U.S.C., Sec. 1257(2) 3

45 U.S.C., Sec. 51, et seq. 9

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OF

THE CLAIM FOR COMPENSATION UNDER THE WORKMEN'S COMPENSATION LAW MADE BY

WALTER E. BRAADT,

Appellant,

vs.

THE CITY OF NEW YORK, DEPARTMENT OF SANITATION (self-insurer),

Respondent,

vs.

WORKMEN'S COMPENSATION BOARD,

Respondent.

(W.C.B. No. 05994124)

Jurisdictional Statement

(a) Official and unofficial reports of the opinons delivered in the Courts below:

Workmen's Compensation Board State of New York, memorandum of decision filed June 5, 1963, W.C.B. Case

No. 05994124; affirmed Appellate Division, Third Department, 21 App. Div. 2d 957; 251 N. Y. S. 2d 376 (3rd Dept. N. Y. 1964); aff'd, Court of Appeals, no opinion; 15 N. Y. 2d 875, 258 N. Y. S. 2d 413 (1965).

Memoranda opinions of Workmen's Compensation Board and Appellate Division, Third Department, appended hereto as Appendices A and B respectively.

(b) The grounds upon which the jurisdiction of this Court in invoked:

(i) Appellant-seaman, upon learning that the waterways where his accident occurred, were in fact navigable waters and not non-navigable as he was erroneously led to believe by misrepresentations of his employer, The City of New York, made application to the New York State Workmen's Compensation Board to review and vacate, on jurisdictional grounds, compensation proceedings and awards made to appellant-seaman under the New York State Workmen's Compensation Law.

The Workmen's Compensation Board denied appellant-seaman's application, holding that the Board had jurisdiction as appellant had utilized the Board's machinery at a series of hearings, resulting in a series of awards, as well as payment and acceptance of these awards. Appellant-seaman, appealed to the Appellate Division, Third Department, which unanimously affirmed the decision of the Workmen's Compensation Board. The Appellate Division held that pursuant to Section 113 Workmen's Compensation Law, appellant-seaman had waived his admiralty, maritime and federal rights under the Jones Act, 46 U. S. C. § 688.

Appellant-seaman appealed on federal constitutional grounds to the Court of Appeals. Over appellant-seaman's

contention that Section 113 of the New York State Workmen's Compensation Law, on its face and as applied to seaman's admiralty and maritime rights and remedies, is repugnant to Article III, Section 2 of the United States Constitution, the Court of Appeals affirmed the order of the Appellate Division, Third Department.

(ii) The appellant is appealing from the final order of the Court of Appeals of the State of New York,* entered on the 11th day of March, 1965, unanimously affirming, without opinion the order of the Appellate Division which unanimously affirmed the award and decision made by the Workmen's Compensation Board of the State of New York dated June 5, 1963.

The notice of appeal to the Supreme Court of the United States was filed in the New York Supreme Court, Appellate Division, Third Judicial Department on June 9, 1965.

(iii) Section 1257(2) of Title 28 U. S. C., confers jurisdiction on the Supreme Court of the United States over this appeal.

(iv) Cases believed to sustain this Court's jurisdiction: *Southern Pacific Co.* v. *Jensen,* 244 U. S. 205; *Washington* v. *Dawson & Co.,* 264 U. S. 219; *Bantam Books, Inc.* v. *Sullivan,* 372 U. S. 58; *Panama Railroad Co.* v. *Johnson,* 264 U. S. 375; *The Lottawana,* 88 U. S. 588.

Compare *South Buffalo R.R. Co.* v. *Ahern,* 344 U. S. 367; *Grant Smith-Porter Shipping Co.* v. *Rhodes,* 257 U. S. 469; *Calbeck, et al* v. *Travelers Insurance Co.,* 370 U. S. 114; *Gahagan Construction Corp.* v. *Armao,* 165 F. 2d 301 (1st Cir. 1948), cert. den'd. 333 U. S. 876; *W. J. McCahan Sugar & Molasses Refining Co.,* v. *Stoeffel,* 41 F. 2d, 651 (3rd Cir. 1930); *Schellenger* v. *Zubik,* 170 F. Supp. 92, (D. C. Pa. 1959).

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* See Appendix C, p. 16 *infra.*

(v) The text of Section 113 New York State Compensation Law is as follows:

> "The provisions of this chapter shall apply to employers and employees engaged in intrastate, and also interstate or foreign commerce, for whom a rule of liability or method of compensation has been or may be established by the congress of the United States, only to the extent that their mutual connection with intrastate work may and shall be clearly separable and distinguishable from interstate or foreign commerce, provided that awards according to the provisions of this chapter may be made by the board in respect of injuries subject to the admiralty or other federal laws in case the claimant, the employer and the insurance carrier waive their admiralty or interstate commerce rights and remedies, and the state insurance fund or other insurance carrier may assume liability for the payment of such awards under this chapter."
>
> *McKinney's Consolidated Laws of New York,* Book 64, Part 2, p. 287.

(c) The questions presented by this appeal are as follows:

1. Whether the application of the waiver of Federal admiralty "rights and remedies" provision of Section 113, New York State Workmen's Compensation Law, to appellant-seaman's rights under the General Maritime Law and Jones Act, 46 U. S. C., § 688, is repugnant to and violates Article III, Sec. 2 of the United States Constitution?

2. Whether rights and remedies for seamen injured in the course of their employment on navigable waters are, by virtue of Article III, Sec. 2 of the United States Con-

stitution, exclusively within the Federal admiralty and maritime jurisdiction to the exclusion of and superseding the operation of the New York State Workmen's Compensation Law?

3. Whether there is a "maritime but local" exception to the paramount Federal maritime and admiralty jurisdiction over seamen injured in the course of their employment on navigable waters, where New York State can constitutionally apply it's Workmens Compensation Law?

4. Whether appellant-seaman, relying on a misrepresentation of his employer, The City of New York, that the waters where the accident occurred were non-navigable, can expressly or impliedly waive, pursuant to Section 113 of the New York State Workmen's Compensation Law his constitutional, (Article III, Sec. 2), and federally protected rights under the General Maritime Law and Jones Act. 46 U. S. C. § 688, by utilizing the machinery of the New York State Workmen's Compensation Board which resulted in a series of awards to appellant.

(d) Statement of the case:

In support of appellant-seaman's application to the Workmen's Compensation Board to set aside and vacate on jurisdictional grounds, the compensation proceedings and awards made to him under the Workmen's Compensation Law, appellant set forth the following facts.

Appellant was injured in an accident on September 20, 1959 while in the course of his employment as a Deckhand aboard a scow in use at the Fresh Kills Disposal Plant, Staten Island, N. Y. The accident occurred when the scow collided with other floating vessels in the Fresh Kills Creek.

Appellant-seaman, employed by the City of New York, Department of Sanitation, accepted New York State Work-

men's Compensation awards in reliance upon a misrepresentation by The City of New York that the accident occurred upon non-navigable waterways.

Appellant did not have occasion to question this representation as to non-navigability of the waterways where the accident occurred until the summer of 1962 when he ascertained that the said waterways were navigable. An action was then instituted in the United States District Court, Southern District of New York, under he Jones Act and General Maritime Law, against The City of New York on appellant-seaman's behalf.

At the hearing before the Workmen's Compensation Board, The City of New York admitted that the waterways where the accident occurred were in fact navigable; the City now contending that appellant was not a seaman within the meaning of the General Maritime Law and Jones Act (41).*

The Workmen's Compensation Board denied appellant's request to take testimony on the issue of whether appellant was in fact a seaman at the time of the accident (40) holding:

> "* * * On review we find that the New York State Workmen's Compensation Board has jurisdiction in this matter. Here as in the case of *Meacham* v. *New York Central Railroad Co.*, (23 CCD1-P.7), the parties have utilized the Board's machinery at a series of hearings resulting in a series of awards, as well as payment and acceptance of these awards. We further find that these awards should not now be set aside." (14).

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* Numbers in parentheses refer to the pages of the transcript of the record.

Appellant-seaman contended in his arguments before the Appellate Courts that: A seaman's rights under the Jones Act and General Maritime Law, promulgated pursuant to Article III, Section 2 of the Constitution of the United States, are exclusive and paramount, superseding the operation of the New York State Workmen's Compensation Law.

The Appellate Division* gave no direct answer to this contention and argument.

However, as to appellant's contention that there is no "maritime but local" exception to the exclusive Federal maritime and admiralty jurisdiction over seaman whereby a state can constitutionally apply its Workmen's Compensation Law, the Appellate Division, cited as authority for its decision in the instant case *Grant Smith-Porter Shipping Co.* v.-*Rhodes,* 257 U. S. 469. This case held that there was a maritime but local exception to the Federal government's exclusive admiralty and maritime jurisdiction.

Section 113 Workmen's Compensation Law is in effect based on this "maritime but local" doctrine.

The decision of the Appellate Division stands for the proposition that a seaman, relying on as misrepresentation of his employer that the waterways where the accident occurred were non-navigable, can nevertheless expressly or impliedly waive, pursuant to Section 113 of the New York State Workmen's Compensation Law, his constitutional and Federally protected rights under the General Maritime Law and Jones Act by utilizing the machinery of the New York State Workmen's Compensation Board.

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* The decision of the Appellate Division was affirmed by the Court of Appeals without opinion.

Appellant's arguments that Section 113 of the Workmen's Compensation Law on its face and as applied to a seaman's rights and remedies, is repugnant to Article III, Section 2 of the United States Constitution, was rejected without discussion. The Appellate Division simply held that:

> "* * * Upon this record, the Board was not bound to find either the employment or waiver under Section 113 within the rule which holds invalid a waiver or waiver statute which 'contravenes the essential purpose expressed by an Act of Congress, or works material prejudice to the characteristic features of the general maritime law or interferes with the proper harmony and uniformity of that law in its international and interstate relations'. * * *" (12)

This Court has repeatedly held that its appellate jurisdiction is properly invoked to review the judgment, orders and decisions of the highest court of the State, which has upheld a State statute against contentions that on the face and as applied, the statute violated the Federal Constitution. *Bantam Books, Inc.* v. *Sullivan,* 374 U. S. 58.

(e) The Federal questions presented in this appeal are determinative factors of the inherent boundaries of the General Maritime Law, and as such are of so substantial nature as to require plenary consideration, with briefs on the merits and oral argument for their resolution.

The issues presented are of first impression to this Court; have a direct effect not only upon the entire shipping industry's employer-seaman-employee relationship, but on the characteristic features of the General Maritime Law, which has been incorporated into Article III, Section 2 of the United States Constitution and is part and parcel thereof. *Panama Railroad Co.* v. *Johnson,* 264 U. S. 375.

It is the function of the Supreme Court to declare the General Maritime Law and its inherent boundaries, which cannot be altered by legislation or by the parties themselves. *The Lottawana,* 88 U. S. 588; *Southern Pacific Co.* v. *Jensen,* 244 U. S. 205; *Panama Railroad Co.* v. *Johnson,* 264 U. S. 375.

In *South Buffalo Co.* v. *Ahern,* 344 U. S. 367, the appellate jurisdiction of this Court was invoked to determine if Section 113 of the New York Workmen's Compensation Law was repugnant to the commerce clause of the United States Constitution, and whether this Section transgressed the Federal Employees Liability Act, 45 U. S. C., Sec. 51, *et seq.*

This Court held that because of the permissive nature of Section 113 of the New York State Workmen's Compensation Law, the Section did not transgress the Federal Employees Liability Act, and it was not repugnant to the commerce clause of the United States Constitution. The Court stated:

> "... untainted by fraud or overreaching, full and fair compromise of Federal Employees Liability Act claims do not clash with the policy of the Act. ... The validity of such an agreement raises a federal question to be resolved by federal law." *South Buffalo Railroad Co.* v. *Ahern,* 344 U. S. at p. 372.

As in the *Ahern* case, *supra,* we again have constitutional federal questions being raised concerning Section 113 of the New York State Workmen's Compensation Law but this time with respect to a seaman's admiralty rights and remedies.

The authority relied upon by the Appellate Division to support the compensation awards, *Grant Smith-Porter Shipping Co.* v. *Rhodes,* 257 U. S. 469, enunciates the "mari-

time but local'' doctrine whereby the States may constitutionally apply their Workmen's Compensation Laws to injuries occurring on navigable waterways. Heretofore, this doctrine has never been applied to a seaman's ''case''. *Gahagan Construction Corp.* v. *Armao,* 165 F. 2d 301 (1st Cir. 1948), *cert. den'd* 333 U. S. 876. With respect to longshoremen and harbor workers, the doctrine is now in serious disrepute. *Calbeck et al* v. *Travelers Insurance Co.,* 370 U. S. 114.

Federal courts have held that seamen have no compensation remedy—State or Federal. The efforts of a State to impose workmen's compensation on seamen are unconstitutional and void irrespective of the fairness of the agreement. *W. J. McCahan Sugar Refining & Molasses Co.* v. *Stouffel,* 41 F. 2d 651 (3rd Cir. 1930); *Schellenger* v. *Zubik,* 170 F. Supp. 92 (D. C. Pa. 1959).

This Court should not permit the ''maritime but local'' doctrine of *Grant Smith-Porter Shipping Co., supra,* to be extended to seaman's rights and remedies, and this doctrine should be reversed with respect to all admiralty rights and remedies.

The rulings and the decision of the Appellate Division, affirmed without opinion by the Court of Appeals clearly brings this case within the jurisdictional provision conferring appellate jurisdiction on this Court.

Respectfully submitted,

WILLIAM GITNICK,
Counsel of Record for Appellant.

KLEIN and HIRSCHBERGER,
Attorneys for Appellant,
George L. Platt,
Of Counsel.

APPENDIX A

Workmen's Compensation Board, Memorandum of Decision filed June 5, 1963

WORKMEN'S COMPENSATION BOARD
STATE OF NEW YORK

Before a Panel of three Members on March 27, 1963.
Present:

FREDERIC E. HAMMER, Presiding
FRANK GRASSO
ISIDORE SIEGELTUCH

In the Matter

of

WALTER E. BRAADT,

vs.

CITY OF NEW YORK DEPT. OF SANITATION.

W. C. B. Case
No. 05594124
Carrier's Case
No. 103 50 59 100
Self-insured

MEMORANDUM OF DECISION

Claimant's attorney objects to the Referee decision and awards, contending that all findings of fact and awards of

compensation be set aside and vacated since there is lack of jurisdiction and claimant desires to proceed under the provisions of the Maritime Law.

A claim for compensation, C-3 form, filed 12/21/59, indicates claimant, a sanitation worker, injured his back on 9/20/59 while moving a scow. Awards were made and paid to claimant for intermittent periods of disability from 9/22/59 to 1/29/62 and on 10/11/62 case was closed on a finding of permanent partial disability. Claimant now seeks to withdraw his claim for compensation.

On review we find that the New York State Workmen's Compensation Board has jurisdiction in this matter. Here as in the case of Meachem vs. New York Central Railroad Co. (23 OCD1-p. 7) the parties have utilized the Board's machinery at a series of hearings resulting in a series of awards as well as payment and acceptance of these awards. We further find that these awards should not now be set aside.

The Referee decision and awards are therefore AFFIRMED and the case closed.

All concur.

FREDERIC E. HAMMER

FRANK GRASSO

ISIDORE SIEGELTUCH

APPENDIX B

Decision of the Appellate Division

SUPREME COURT — APPELLATE DIVISION
THIRD JUDICIAL DEPARTMENT

July 15, 1964. 6678

In the Matter

of

The Claim of WALTER E. BRAADT,

Appellant,

vs.

CITY OF NEW YORK—DEPARTMENT OF SANITATION,

Respondent.

WORKMEN'S COMPENSATION BOARD,

Respondent.

MEMORANDUM BY THE COURT. Claimant, describing himself as a "sanitation man", employed by the Department of Sanitation of respondent City of New York, and as injured while working as a "deckhand on scow", applied for and received workmen's compensation, but now appeals from a decision denying his application to set aside the awards, asserting that the board was without jurisdiction to make them and that he and his employer could not waive his rights under the Jones Act (U. S. Code, tit. 46, §688) whereby a seaman injured in the course of his employment

"may, at his election, maintain an action for damages at law". Respondent employer contends that the awards were properly made under section 113 of the Workmen's Compensation Law providing that awards of compensation "may be made by the board in respect of injuries subject to the admiralty or other federal laws in case the claimant, the employer and the insurance carrier waive their admiralty or interstate commerce rights and remedies".

Claimant stated that he worked on boats and on scows, cranes and other floating equipment "maybe two or three days a week" and that the rest of the time he worked with boilermakers, on land. On the day of the accident he was assigned to painting work. He was injured, as the result of a collision, when about to throw a line to assist in moving a scow which had caught fire.

Citing *Matter of Meachem* v. *New York Cent. R.R. Co.* (8 N Y 2d 293), the board based its determination of jurisdiction on its finding that "the parties have utilized the Board's machinery at a series of hearings resulting in a series of awards as well as payment and acceptance of these awards." These facts are not disputed. Additionally, claimant, having filed his claim on December 21, 1959, was represented after August 8, 1960 by his present attorneys, who appeared at hearings of December 16, 1960 and October 11, 1962 and until the latter date did not question jurisdiction or raise the present contention that claimant had mistakenly believed that Fresh Kills Creek, Staten Island, where the accident occurred, was non-navigable and that in consequence he was restricted to workmen's compensation; and this although his attorneys are also proctors in admiralty.

Contrary to appellant's contention, the principles stated in *Meachem, supra,* and in *Matter of Ahern* v. *South Buf-*

falo Ry. Co. (303 N. Y. 545, affd. 344 U. S. 367) are, in our view, applicable to this accident on a scow, and are not limited to waivers of liability arising out of cases which might otherwise be sued under the Federal Employees' Liability Act. Interestingly enough, the maritime act itself, in another context, makes reference to "cases of personal injury to railway employees." (U. S. Code, tit. 46 § 688.) Upon this record, the board was not bound to find either the employment or the waiver under section 113 within the rule which holds invalid a waiver or a waiver statute which "contravenes the essential purpose expressed by an act of Congress, or works material prejudice to the characteristic features of the General Maritime Law, or interferes with the proper harmony and uniformity of that law in its international and interstate relations." (*Southern Pacific Co.* v. *Jensen*, 244 U. S. 205, 216.) The awards were proper, upon the entire record, and are supported by authority. (See *Grant Smith-Porter Ship. Co.* v. *Rhode*, 257 U. S. 469; *Matter of Haglund* v. *Morse Dry Dock & Repair Co.*, 255 App. Div. 895; *Herbert's Case*, 283 Mass. 348.)

Decision affirmed, without costs.

GIBSON, P. J. HERLIHY, REYNOLDS, TAYLOR and HAMM, JJ., concur.

APPENDIX C

Order Appealed From of Court of Appeals

COURT OF APPEALS

STATE OF NEW YORK, ss:

PLEAS in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 11th day of March in the year of our Lord one thousand nine hundred and sixty-five, before the Judges of said Court.

WITNESS,

The HON. CHARLES S. DESMOND,

Chief Judge, Presiding.

RAYMOND J. CANNON, Clerk.

REMITTUR: March 11, 1965.

No. 408

IN THE MATTER

OF

THE CLAIM FOR COMPENSATION &C. MADE BY WALTER E. BRAADT,

Appellant,

vs.

THE CITY OF NEW YORK SANITATION DEPARTMENT (self-insurer)

Respondent.

Appendix C

BE IT REMEMBERED, That on the 26th day of October, in the year of our Lord one thousand nine hundred and sixty-four, Walter E. Braadt, the appellant—in this cause, came here unto the Court of Appeals, by Klein & Hirschberger, his attorneys, and filed in the said Court a Notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the Third Judicial Department. And the City of New York—Department of Sanitation (self-insurer), the respondent—in said cause, afterwards appeared in said Court of Appeals by Leo A. Larkin, its attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

WHEREUPON, the said Court of Appeals having heard this cause argued by Mr. George L. Platt, of counsel for the appellant—, and by Mr. Benjamin Offner, of counsel for the respondent City, and by Mr. Morris N. Lissauer, of counsel for the respondent Board, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed, without costs.

And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the Appellate Division of the Supreme Court, Third Judicial Department, there to be proceeded upon according to law.

THEREFORE, it is considered that the said order be affirmed, without costs, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Appellate Division of

the Supreme Court, Third Judicial Department, before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Appellate Division, before the Justices thereof, &c.

/s/ RAYMOND J. CANNON
Clerk of the Court of Appeals
of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
Alabny, March 11, 1965.

I HEREBY CERTIFY, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

/s/ RAYMOND J. CANNON
Clerk

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